

General Questions

1. When were the amendments effective?

The Lacey Act amendments included in the 2008 Farm Bill were effective as of May 22, 2008. As a practical matter, this means that enforcement actions may be taken for any violations committed on or after that date. Note, however, that the requirement to provide a declaration under the amended Act did not become effective until December 15, 2008 (180 days from the date of enactment). Moreover, enforcement of the declaration requirement will be phased-in and initial enforcement for some products will begin April 1, 2009. See http://www.aphis.usda.gov/plant_health/lacey_act/downloads/FederalRegister02-03-2009.pdf for the specific phase-in schedule.

2. What is considered a “plant” under the Lacey Act?

Under the Lacey Act, as amended, “Plant” means: “Any wild member of the plant kingdom, including roots, seeds, parts or product thereof, and including trees from either natural or planted forest stands.” There are some exclusions. Common cultivars (except trees) and common food crops are excluded from the definition of plant. In addition, a scientific specimen of plant genetic material that is to be used only for laboratory or field research and any plant that is to remain planted or to be planted or replanted is also excluded from the definition of plant, unless the plant is listed under the Endangered Species Act or a similar State law, or is listed in an appendix to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

3. Why does Lacey now cover “any wild member of the plant kingdom” (excluding common food crops and common cultivars)? Are there plant products (other than timber and timber products) where illegal harvest and associated trade is a concern?

Although considerable recent attention has been focused on illegal logging and associated trade, other wild plants also face the threat of illegal harvesting. Prior to the recent amendments, Lacey Act protections covered only endangered plants (such as those listed on appendixes of CITES), and there were prosecutions involving the illegal harvest and associated trade of non-timber plants species such as orchids, ginseng, saguaro cacti, and others.

4. Will regulations be developed?

The Lacey Act amendments include specific provisions for the promulgation of regulations including to define the terms “common food crop” and “common cultivar” and to limit the exclusion of packaging material from the declaration requirements, if warranted. However, most of the statute is self-implementing and thus may be enforced prior to the issuance of any implementing regulations.

5. What is the purpose of the declaration requirement?

Congress did not set forth within the Act an official purpose of the declaration requirement. Declarations generally serve several purposes including but not limited to data acquisition and accountability. Prior to the recent amendments, the Lacey Act already required similar declarations for imports (as well as exports) of wildlife.

6. Where can I find a list of plants prohibited under the Lacey Act?

The Lacey Act pertains to plants (in particular trees) that are illegally harvested. There is no list because the Lacey Act applies to all plants, as defined in the statute (see question #2).

7. Where can I find scientific names for plants?

The following websites may be useful to look-up the scientific names of plants:

- <http://plants.usda.gov>
- http://www.ars-grin.gov/cgi-bin/npgs/html/tax_search.pl
- <http://www.itis.gov/>
- <http://www.ipni.org/>

8. Is there a database of foreign laws that will be enforced as a result of the Lacey Act Amendment?

The Lacey Act now makes it unlawful to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any plant, with some limited exceptions, taken, possessed, transported or sold in violation of the laws of the United States, a State, an Indian tribe, or any foreign law that protects plants or that regulates certain plant related offenses. It is the responsibility of the importer to be aware of any foreign laws that may pertain to their merchandise prior to its importation into the United States. Currently, the U.S. Government has no plans to create such a database.

9. Is there a *de minimis* exception?

The statute does not provide for any *de minimis* exceptions, either to the substantive prohibitions or to the declaration requirement. However, the relative amount of an item at issue may be a factor in enforcement as it may go to the issue of knowledge and/or due care. For example, violations of the declaration requirements must be knowing before there is any criminal violation under the statute; there is no due care misdemeanor for violation of the declaration requirement. Where a very small amount of product is found to be in a shipment but not in a declaration, it may indicate a circumstance in which the declaration was not knowingly false, and thus not a criminal violation. And, as with any other customs declaration requirements (e.g., product description, weight, value, etc.) violations, enforcement agencies may exercise discretion on any potential penalties depending upon the severity of the incident.

10. How will affected importers/industries be kept informed about information pertaining to the Lacey Act?

APHIS will continue to provide the latest information regarding the Lacey Act on our Web site, <http://www.aphis.usda.gov>. We also encourage persons interested in receiving timely updates on APHIS's Lacey Act efforts to register for our stakeholder registry at <https://web01.aphis.usda.gov/PPQStakeWeb2.nsf> and select "Lacey Act Declaration" as a topic of interest.

Scope of the Declaration Requirement

11. Which products need to be declared?

Currently, only items classified in certain subchapters of HTS Chapters 44, 47, 48, and 94 are scheduled for enforcement of the requirement to file a plant import declaration. Please consult http://www.aphis.usda.gov/plant_health/lacey_act/downloads/FederalRegister02-03-2009.pdf for the specific phase-in schedule. Any changes to the current phase-in schedule will be announced in the *Federal Register*.

12. Does the declaration requirement apply to all types of entries?

At present, we will be enforcing the declaration requirement for formal entries (i.e., most commercial shipments). At this time, we are not enforcing the declaration requirement for informal entries (i.e., most personal shipments), personal importations, or mail, transportation and exportation entries, in-transit movements, carnet importations (i.e., merchandise or equipment that will be re-exported within a year), and foreign trade zone and warehouse entries. As with the different product types, we would issue a Federal Register notice before initiating any enforcement regarding such imports.

13. What is considered packaging material, and do I have to declare it?

For the purposes of the Lacey Act declaration requirement, packaging material is defined as any material used to support, protect, or carry another item. This includes, but is not limited to, items such as: wood crating, wood pallets, cardboard boxes, packing paper used as cushioning, etc. Packaging material is exempt from the Lacey Act's declaration requirement unless the packaging material itself is the item being imported or it is used for some other purpose than supporting, protecting or carrying another item.

14. I am importing CITES regulated material that already has proper CITES documentation, do I need to declare?

At this time, all shipments of material (including CITES regulated material) that fall under the sections of the HTS Chapters (44, 47, 48, or 94) listed in the implementation schedule AND makes **formal customs entry** into the United States must be declared.

15. Is there an exemption for scientific specimens?

Scientific specimens of plant genetic material (including roots, seeds, germplasm, parts, or products thereof) that are to be used only for laboratory or field research are excluded from the definition of “plant” unless they are listed in an appendix to CITES, as an endangered or threatened species under the Endangered Species Act, or pursuant to any State law that provides for the conservation of species that are indigenous to the State and are threatened with extinction.

16. One or more components of my merchandise would require a declaration, but the finished product does not fall within HTS Chapters 44, 47, 48, or 94. Do I need to declare my merchandise?

At this time, we plan to enforce the requirement of the plant import declaration only for those subchapters of HTS Chapters 44, 47, 48, and 94 that appear in the implementation schedule published in the *Federal Register* on February 3, 2009. For example, wooden hammer handles fall under Chapter 44 and therefore failure to file a declaration would result in an enforcement action. However, complete hammers with wooden handles fall under HTS Chapter 82 and failure to file a declaration would NOT result in an enforcement action.

17. Will the declaration require information on the “chain of custody” for products or the raw materials used to manufacture the products being imported?

No. The declaration will require information on the species of plant (the scientific name), the name of the country where the plant was taken (harvested), and the value and quantity of the plant.

18. If I genuinely do not know the species or the country from which the plant was taken, should I guess?

No. In order to import plant products that fall under the scope of the declaration requirement, you are required to declare this information. However, the declaration requirement of the statute does provide that in the case in which the species of plant used to produce a plant product that is the subject of an importation varies, and the exact species used to produce the plant product is unknown, the declaration shall contain the name of each species of plant that may have been used to produce the plant product. Furthermore, in the case in which the species of plant used to produce a plant product that is the subject of an importation is commonly taken from more than one country, and the exact country from which the plant was taken and used to produce the product is unknown, the declaration shall contain the name of each country from which the plant may have been taken.

19. Which countries have imports that are subject to the provisions of the Lacey Act?

Imports from all countries are subject to the provisions of the Lacey Act.

Filing a Declaration

20. What agency/office will collect the information on the declaration forms?

The declaration information will be collected by Customs and Border Protection, Department of Homeland Security.

21. When and where do I declare my merchandise?

The electronic declaration system will piggy-back off of the Customs Entry System. If you make an electronic entry, and your merchandise falls under the Lacey Act declaration requirement; you will automatically be prompted to enter Lacey Act declaration information. If you do not submit the Lacey Act declaration electronically and you are required to do so, then you must submit a paper declaration at the time of import.

22. What is the process for submitting a paper declaration form?

Go to the main page of the APHIS Lacey Act website at http://www.aphis.usda.gov/plant_health/lacey_act/index.shtml and fill out a copy of paper declaration form (PPQ Form 505). Importers should have the form available for Customs and Border Protection (CBP) to review at the port of entry. After CBP clears the shipment, the importer must mail the form to USDA at the following address: The Lacey Act, c/o the U.S. Department of Agriculture, Box 10, 4700 River Road, Riverdale, MD 20737.

23. What is meant by entered value (Section 12) of the declaration form?

Entered value is the value of the entire shipment in U.S. dollars.

24. What is meant by unit of measure (Section 17) of the declaration form?

The unit of measure is the unit that best describes the amount of declared material in shipments (such as dozens, kilograms, meters, square meters, cubic meters, number of items, number of pieces, metric tons, or board feet).

25. What is meant by country of harvest (Section 15) of the declaration form?

The country of harvest is the country where the original source material was grown, and subsequently cut down, picked, or otherwise removed (i.e., harvested). This may not be the same country that subsequently processed or is exporting the material. Thus, the country of harvest of the declared plant material may differ from the country of origin of the finished product.

26. Will importers be permitted to submit blanket declarations?

The current electronic system does not permit importers to file blanket declarations. As we move towards a more permanent system to collect and store Lacey Act declaration information, we will consider how to accommodate such declarations.

27. Will my declaration information be publicly available?

Under U.S. law certain information in the control of the government is by law publicly available through various channels. The U.S. Government has not made a formal decision on whether declaration information will be made publicly available outside of formal legal processes such as FOIA requests. It is likely that at least some of the information will be made available to interested parties. Under existing legal frameworks, it is anticipated that any information provided to third parties will not contain identifying information for the importer, exporter, or consignee.

Enforcement of the Declaration Requirement

28. What is considered due care with respect to the declaration requirement of the Lacey Act?

The declaration requirement is specifically excluded from the “due care” penalty provisions under the Lacey Act. Civil and criminal penalties apply only to any person who *knowingly* violates the declaration requirements. In addition, any person who violates the declaration requirement, except for knowing violators, may be assessed a civil administrative penalty of \$250. Furthermore, any plant or plant product imported in violation of the import declaration requirements may be subject to forfeiture.

29. Is there an innocent owner exception for plants and plant products imported in violation of the declaration requirement?

No.

30. Will shipments be refused entry if the information required in the declarations is not known and not provided?

Shipments not in compliance with the law may be refused entry. Such enforcement decisions are made on a case-by-case basis, as with any other customs entry requirement violation.

31. The Lacey Act states that if the species contained in the product varies and the actual species is unknown, then the declaration should “contain the name of the species that may have been used...” Can the product be seized and/or forfeited if I am wrong?

Yes. A product covered by the declaration requirements in the Lacey Act is subject to seizure and forfeiture if the declaration is inaccurate. However, as with any other customs declaration requirement violations, enforcement agencies may exercise discretion on any potential penalties depending upon the severity of the incident.

32. Will third party certification guarantee that products cannot be held based on suspicion of illegality?

No. Although most certification systems for forest products include legality of harvest among their criteria, these are voluntary, private sector systems, the accuracy of which cannot be readily determined by the government. Nevertheless, such certification systems may provide information useful to manufacturers and importers in their efforts to exercise due diligence regarding sources and species of timber.

33. The Lacey Act states that if the species used commonly comes from more than one country and the actual location of harvest is unknown, then the declaration should “contain the name of the country from which the plant may have been taken...” Can the product be seized and/or forfeited if I am wrong?

Yes. See Response to Question 31.

34. Will there be an “enforcement plan?” Will specific countries/products be targeted?

There will not be an “enforcement plan” with respect to the new provisions of the Lacey Act. However, the new Lacey Act provisions (other than the declaration requirement) enacted as part of the 2008 Farm Bill are now effective, and responsible federal agencies fully intend to enforce these new provisions. How enforcement resources will be allocated is yet to be determined; in general, enforcement priorities and plans are not discussed in detail. In most enforcement work, if information is developed indicating a high likelihood of violations of a particular type, enforcement resources will likely focus on those types of activities.

35. How soon can we expect enforcement actions based on this new authority? Are there cases currently under investigation?

The new Lacey Act provisions are applicable to activities occurring on or after May 22, 2008. Enforcement actions can be anticipated if and when there is legally sufficient evidence of a violation that was committed on or after that date. It is government policy to neither confirm nor deny the existence of any particular criminal ongoing investigations.

36. Will additional resources be made available for enforcement? Will additional investigators and prosecutors be hired?

Congress has not allocated any specific funds for the hiring of additional investigators or prosecutors to enforce the new provisions. Existing enforcement resources already are committed to enforcing the Lacey Act and will enforce the new provisions as well. Enforcement resources are regularly reassessed and reallocated to ensure their best use.

**37. What sources and/or types of information will be used to take enforcement actions?
Will enforcement be based on information provided by the public?**

As with other statutes, federal investigators and prosecutors make use of reliable information from a variety of sources in investigation and enforcement of the Lacey Act, including but not limited to information provided by members of the public.

38. What are the penalties for violating the amended Lacey Act?

Violations of the Lacey Act provisions for timber and other plants, as well as fish and wildlife, may be prosecuted in three basic ways:

- Civilly – meaning monetary penalties
- Criminally – fines and penalties and potential incarceration
- Forfeiture – dispossession of the plant, fish, or wildlife in question

Civil Penalties.

The Lacey Act allows for the imposition of civil administrative monetary penalties against a party who in the exercise of due care should have known of the illegal nature of the plant or wildlife in question, or who knowingly commits a false labeling offense or knowingly violates the declaration requirements. Civil penalties of up to \$10,000 may be imposed, with the size of the penalty depending on the nature, circumstances, extent, and gravity of the prohibited act committed and the violator's culpability, ability to pay, and such other matters as justice may require. In addition, any person who commits a marking offense or violates the declaration requirements, except for knowing violators, may be assessed a penalty up to \$250.

Criminal Penalties.

Criminal penalties may also be imposed for certain violations, with the offense being either a felony or misdemeanor depending on, primarily, the defendant's knowledge, or mens rea, of the underlying illegality of the product at issue.

Misdemeanor. In order to impose a misdemeanor criminal penalty, the government must show that the defendant "in the exercise of due care" should have known of the illegal nature of the plant, fish, or wildlife in question, although not necessarily the specific law violated. A defendant found guilty of a Lacey Act misdemeanor shall be fined not more than \$100,000 for individuals or \$200,000 for organizations, or imprisoned not more than one year, or both, for each violation.

Felony. In order to impose a felony criminal penalty, the government must show that the defendant "knew" or was generally aware of the illegal nature of the plant, fish, or wildlife, although not necessarily the specific law violated. Felony violations, in addition to a "knowing" scienter or mens rea requirement, require either proof that the defendant knowingly imported or exported plants or wildlife, or "knowingly" engaged in conduct

during the offense that involved the sale or purchase of, the offer for sale or purchase of, or the intent to sell or purchase plants or wildlife with a market value of over \$350. A defendant found guilty of a Lacey Act felony shall be fined not more than \$250,000 for individuals or \$500,000 for organizations or twice the amount of the gross gain or loss, or imprisoned not more than 5 years, or both, for each violation.

Forfeiture. The Lacey Act's civil forfeiture provisions are enforced on a strict liability basis. If illegal timber or a product made from illegal timber (and/or illegal wildlife or fish) is brought into the U.S., that timber or timber product may be seized whether or not the person from whom it is seized knew of the illegal nature of the product. Nonetheless, the government must still show that a plant, plant product, or wildlife has been imported or received in violation of a State or foreign law or regulation.

Domestic Requirements and Interstate Movement

39. How do the 2008 amendments of the Lacey Act apply to forest, farm and associated operations within the United States and our trust territories?

The 2008 Farm Bill amended the Lacey Act by expanding its protection to a broader range of plants and plant products than were previously covered by the Act. The Lacey Act now, among other things, makes it unlawful to import applicable timber or plant products without an import declaration (see other Q&A's specifically on the new declaration requirement). The Lacey Act prohibitions against illegal harvest, transport and trade can also be prosecuted domestically in cases where covered timber and plants are illegally taken from Federal land, or illegally taken from State or private lands and then entered into interstate or foreign commerce. Finally, the Lacey Act makes it unlawful to make or submit any false record or label with respect to any covered plant or plant product, including timber.

40. What constitutes a Lacey Act violation based on violation of domestic law?

Cases may include, but are not limited to, those involving the transportation, sale, receipt, acquisition or purchase of illegally taken plants, including timber. Illegally taken plants are those plants taken in violation of Federal, State or Tribal law, including State forest practice acts. Generally, Lacey Act violations are triggered when the illegally taken plants are entered into interstate or foreign commerce, or when such products are transported within or from Federal or Tribal lands. Therefore, if a tree is illegally harvested in a national park, Lacey Act charges may be brought against any person who exports, transports (even if the transport remains within the same Federal jurisdiction), sells, receives, or purchases that tree, timber from the tree, or any product thereof.

41. Is new documentation now required for the interstate transport of timber and plant products?

No. Although the Lacey Act does now require an import declaration for timber and plant products being imported into the United States, it does not introduce any new documentation requirement for interstate transport of plants or plant products.

42. Does the amendment apply to or affect management of domestic forest operations or the reporting requirements associated with them?

The prohibitions of the amended Lacey Act apply to domestic (interstate) commerce as well as international trade (both imports and exports). The amended Lacey Act does not require anything explicitly different or additional of forest operations, nor does it impose any additional paperwork or reporting requirements beyond the new import declaration. However, those responsible for a variety of plant and timber transport, purchasing and processing should know their supply sources as a matter of good practice. Those who either knowingly or unknowingly accept illegally taken and transported covered plant or timber products may be subject to prosecution and/or loss of the shipment due to seizure and forfeiture (see relevant Q&As on penalties and enforcement actions associated with the Lacey Act). U.S. exporters of a plant or timber that is finished internationally and imported back into the U.S. may need to provide species and country of harvest information so that the subsequent importer can comply with their declaration requirements.

43. What additional tools or options does the Lacey Act potentially provide for dealing with domestic timber theft that did not exist before?

Illegally taken timber and plant products can now be seized/forfeited and those who do not exercise due care in the procurement, purchase and transport of such products can be prosecuted under the Lacey Act if the plant products were illegally harvested on Federal or Tribal land, or if they were illegally harvested in violation of State law and entered into interstate commerce. Therefore, the amended Lacey Act now provides the basis for greater cooperation among States, and between the States and the Federal government to combat timber theft. States can now work with the appropriate Federal law enforcement agencies to investigate and prosecute Lacey Act violations. For further information, please see the Q&A's on the enforcement provisions of the Lacey Act.

44. Will Federal agents be "checking" compliance with State forest practices regulations?

State forest practices regulations are enforced by their respective State jurisdictions. However, in cases where illegally taken plant products are transported across State lines, involved States can now cooperate with the federal prosecutors to bring Federal Lacey Act charges against violators. It is possible that information obtained by or provided to Federal agents may lead to Federal Lacey Act charges against violators of State forest and plant conservation laws and regulations.

45. Does the Lacey Act apply differently to timber harvested in violation of Federal, State or Tribal law?

Yes. On State and private lands, the Lacey Act prohibits the transportation, sale, receipt, acquisition, or purchase in interstate or foreign commerce of covered plants, timber or plant products harvested in violation of State conservation laws and regulations. On Federal and

Lacey Act Amendment:

March 27, 2009

Complete List of Questions and Answers

Tribal lands and jurisdiction, the same prohibitions apply regardless of whether the plant, timber or product was entered into interstate or foreign commerce.

46. What Federal agencies will be responsible for enforcing the Lacey Act domestically?

In cases where timber and other plant products are illegally taken from Federal land, the designated Federal law enforcement agency (i.e. U.S. Forest Service, National Park Service, U.S. Fish and Wildlife Service, etc.) has enforcement authority. For cases involving State and private land, there is currently no single Federal enforcement agency or clearly established processes or agency relationships. The Forest Service is currently exploring this issue and possible alternatives with the National Association of